IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 6937 OF 2005

Shailesh @ Lalit Bhanabai Patel ...Applicant

Versus

The State of Maharashtra ...Respondent

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Shri. S.B. Shetye with Shri. Harshad Palve, Advocate for the Applicant

Ms. Shilpa V. Gajare, A.P.P. for State

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 29TH NOVEMBER, 2005

P.C.:-

1. Heard the learned advocate for the applicant and the learned A.P.P. for State.

2. The applicant-original accused No.1, is seeking bail in C.R. No 300 of 2003 registered with Ambad Police Station District Nasik. The said case is registered mainly U/sec. 302 of I.P.C.

3. The applicant had earlier preferred an application for bail bearing Criminal Application No.

1070 of 2004. The said application came to be rejected by me by order dated 15.3.2004. All aspects on merits have been considered and thereafter, the application for bail came to be rejected. As far as the merits of the case are concerned, at this stage, I do not find it necessary to reconsider the prayer for bail.

4. The second ground on which bail is sought is that the applicant has been in custody since September, 2003 and the trial has not yet started. It is submitted that in fact the charge has also not been framed. It is submitted that a Special Public Prosecutor Mr. Nikam has been appointed in the said case and as he is not available the trial court has not been able to proceed with the trial. In answer to this contention, the learned A.P.P. has pointed out that this is not the case, as there is another A.P.P. Mr. Ajay Misar who is also looking after the said case and as and when the trial actually commences, Mr. Nikam would be ready and available to conduct the trial. The learned A.P.P. has further submitted that the trial has not commenced because the original accused Nos. 3 and 4 Mr Santoshkumar Girijanand Jha and Mr. Sanjay Udhamchand Jha

respectively, have not been attending the trial Court and hence, the trial has not commenced. The learned A.P.P. has also pointed out that non bailable warrants have been issued against both these accused persons and as soon as their presence is secured, the trial will commence. He has also submitted that in case their presence is not secured within a reasonable time, the prosecution may consider separating the trial in respect of the present applicant.

5. In this view of the matter, I am not inclined to grant bail to the applicant at this stage. Liberty is granted to the applicant to prefer fresh application for bail in case the trial does not commence till 31.03.2006.

6. Application is rejected.

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